MADHYA PRADESH HIGH COURT

Rajeev Khandelwal

Vs.

Arun

Misc. Petn. No. 2642 of 1985
(N.D. Ojha, C.J. C.P. Sen and K.K. Adhikari, JJ.)

16.07.1987

JUDGMENT

N.D. Ojha, C.J.

1. The petitioner in his capacity as landlord of an accommodation of which the respondent was the tenant obtained a decree for eviction of the respondent and for arrears of rent under the provisions of the M.P. Accommodation Control Act, 1961. When the decree was put in execution, the respondent filed an objection purporting to be under Section 47, Civil Procedure Code, asserting that he had made payment of the decretal amount out of Court to the decree-holder, that a compromise had been arrived at between the parties that the judgment-debtor shall deliver vacant possession of the accommodation to the decree-holder and that it will be again given to the judgment-debtor on an enhanced rent of Rs. 500/- per month, the earlier rent being Rs. 275/- per month. His case further was that he complied with the terms of the fresh agreement and that since he was now in possession over the accommodation in pursuance of fresh agreement of tenancy, the decree under execution had become in executable. The case of the petitioner in reply to the said objection was that he never entered into any agreement of fresh tenancy as alleged by the respondent, that no payment whatsoever was made to him by the respondent as alleged by him and that even otherwise the objection raised by the respondent was not maintainable in law inasmuch as the plea set up by him was one about adjustment was not got recorded as certified by the respondent as contemplated by sub-rule (2) of Rule 2 of Order 21, Civil Procedure Code, the same could not be recognized by the Court executing the decree in view of the provision contained in this behalf in sub-rule (3) of Rule 2 of Order 21 of the Civil Procedure Code. This plea raised by the petitioner found favor with the Court executing the decree and the objection raised by the respondent-tenant was rejected.

2. The respondent preferred a revision against the order of the Court executing the decree which was allowed by the District Judge on 16th July, 1985. The District Judge took the view that the objection filed by the respondent pertained to execution of the decree as contemplated by Section 47, Civil Procedure Code, and notwithstanding the provisions contained in Order 21, Rules 2 and 3, Civil Procedure Code, the same deserved to be investigated. On this view, after setting aside the order of the Court executing the decree, the District Judge remanded back the case to the said Court with a direction to investigate into the agreement alleged by the respondent-tenant on merits after giving the parties an opportunity to adduce evidence. It is this order dated 16th July, 1985 passed by the District Judge which is sought to be quashed in the present writ petition.

3. When the writ petition came up for hearing it was pointed out that on the point in issue whether such an objection as had been raised by the respondent in the Court executing the decree could be entertained by the Court executing the decree in spite of the bar created in this behalf by sub-rule (3) of the Rule 2 of Order 21, Civil Procedure Code, there was a difference of opinion between two Division Benches of this Court, namely, in *Bahadur Singh Gupta v. Mohammad Ali,* [1] and *Bherulal v. Ramautar,* [2] On the view that there was an apparent conflict in the decision of the two Division Benches, the matter has been referred to a Full Bench and it is thus that the present writ petition has come up before us.

4. Before dealing with the respective submissions made by learned counsel for the parties, we find it necessary to point out the facts in brief and the ratio decidendi of the two decisions referred to above. The decision in the case of Bahadur Singh Gupta (supra) was given in a Letters Patent Appeal. The appellant got a decree for ejectment and damages against the respondent and the said decree was put in execution by presenting an application in this behalf. The respondent took an objection to the execution of the decree but the appellant in the absence of the respondent got the execution dismissed on the ground that he did not want to prosecute it. Subsequently the appellant made a second application for execution of the decree. The respondent filed an objection purporting to be one under Section 47, Civil Procedure Code, contending, inter alia, that there had been a settlement between the parties under which the appellant had given up his right of ejectment and had made the respondent his tenant on a fresh contract of tenancy on an enhanced monthly rent and the respondent had paid certain amount towards the compromise. On this ground the

respondent asserted that the execution application deserved to be dismissed. To this objection, among others, the reply of the appellant was that the objection taken by the respondent amounted to an adjustment of the decree but since it was not certified within time, it was barred under Order 21, Rule 2, Civil Procedure Code. This plea of the appellant was accepted by the Court executing the decree and that order was maintained in appeal by the Additional District Judge. In second appeal, however, a learned single Judge of this Court took the view that since there was no delivery of possession by the appellant to the respondent and a fresh contract of tenancy had been created, there had been no adjustment of the decree and the question as to whether the agreement between the parties had rendered the decree unenforceable could be inquired into under Section 47, Civil Procedure Code and Order 21, Rule 2 thereof had no application. On this view, the learned single Judge remitted the case to the executing Court for investigating the agreement alleged by the respondent on merits. Against this judgment of the learned single Judge a Letters Patent Appeal was filed and it was held that in view of the words "under a decree of and kind" in sub-rule (1) of Rule 2 of Order 21, Civil Procedure Code the said rule applied to every kind of decree and the agreement set up by the respondent amounted to adjustment of decree and fell within the ambit of Order 21, Rule 2, Civil Procedure Code, and if the adjustment has not been certified under the said rule, the executing Court could not take cognizance of it. The order of the learned single Judge was accordingly set aside and that of the first appellate Court restored.

5. In the case of Bherulal (supra) the petitioner had obtained a decree for ejectment against the non-applicant for ejectment and arrears of rent. On the said decree being put in execution, the non-applicant raised certain objections by saying that the decree-holder had obtained possession of the decretal premises and after having obtained possession thereof, the decree-holder entered into a fresh agreement with the non-applicant and let out the premises to him on enhanced monthly rent. On its basis it was contended that the decree had been satisfied and a fresh contract of tenancy had been entered into and the non-applicant judgment-debtor being in possession under the new contract, the decree for eviction could not be executed against him. This objection was rejected by the executing Court on the ground that it pertained to adjustment of the decree and the adjustment not having been certified under Order 21, Rule 2, Civil Procedure Code, within the prescribed period of limitation, it could not be considered. The order of the executing Court, however, was set aside on appeal by the Additional District Judge, a revision was preferred before this Court by the landlord and it was

contended that as the objection of the judgment-debtor fell within the ambit of Rule 2 of Order 21, Civil Procedure Code, and as admittedly they had not been certified in accordance with the procedure prescribed in the said rule within the period of limitation, no enquiry could be conducted. The revision came up before a learned single Judge and was referred by him to a larger Bench and in view of the reference it was decided by a Division Bench. The Division Bench took the view that the objection raised by the judgment- debtor was in two parts : (i) that the decree had been satisfied as the possession had been restored to the decree-holder of the premises, and (ii) that the non-applicant had been put into the premises under a fresh agreement on enhanced rent, and held that the first part of the objection about 'satisfaction' and handing over of possession to the decree-holder may be affected by the provisions of sub-rule (3) of Rule 2 of Order 21 but the second part clearly referred to an agreement apart from the decree which came in the way of the execution of the decree and thus pertained to "execution of the decree" as contemplated by Section 47, Civil Procedure Code and has to be enquired into. In taking this view it was pointed out :

> "It is therefore clear that under Section 47 of the Civil Procedure Code the executing Court is conferred with powers to determine objections with regard to three things : (i) execution, (ii) satisfaction, and (iii) discharge. So far as 'satisfaction' is concerned, a specific procedure has been provided under Order 21, Rule 2 and if that is not followed, sub-rule (3) of Rule 2 provides that the question cannot be gone into by the executing Court. But there could be no difficulty when the objection pertains to the 'execution' of the decree and as discussed earlier the objection No. 2 raised by the non-applicant judgment-debtor clearly pertains to the execution of the decree".

It was accordingly held that in the facts and circumstances of the case the judgment-debtor could resist the execution of the decree without any application being made by him under Order 21, Rule 2, Civil Procedure Code, and adjustment and/or satisfaction having been recorded by the Court which passed the decree.

6. It was urged by learned counsel for the petitioner that the decision of this Court in the case of Bahadur Singh (1977 Jab LJ 609) (supra) lays down correct law. It was pointed out that this decision unfortunately does not seem to have been brought to the notice of the learned Judges who decided the subsequent case of Bherulal (supra). On the other hand, reliance in that case was placed on that very decision of the learned

single Judge reported in 1977 Jab LJ 29 which was reversed in the Letters Patent Appeal in the case of Bahadur Singh (supra). For the respondent, on the other hand, it was urged by his learned counsel that Bherulal's case (supra) really lays down the correct legal position inasmuch as an objection of the nature such as was raised in that case and in the instant case pertains to the execution of the decree within the meaning of Section 47, Civil Procedure Code, and since the word 'adjustment' used in Order 21, Rule 2, Civil Procedure Code, has not been used in Section 47 Civil Procedure Code the provision contained in Order 21, Rule 3, cannot in any way curtail the jurisdiction of the executing Court to investigate an objection pertaining to the 'execution' of the decree.

7. Having heard learned counsel for the parties at some length, we are of opinion that the decision of the Division Bench of this Court in the case of Bahadur Singh (supra) lays down the correct legal proposition in regard to the scope of Order 21, Rule 2 of the Civil Procedure Code. The question which really arises for consideration is about the scope and purport of the term 'adjustment' used in Order 21, Rule 2, Civil Procedure Code. In this connection it would be pertinent to notice that Section 47, Civil Procedure Code does not use the word 'adjustment' but uses the words relating to the execution, discharge or satisfaction of the decree. If the purpose of enacting Order 21, Rule 2, Civil Procedure Code was to confine its applicability to 'satisfaction' of the decree alone as seems to be the view taken in Bhurelal's case (supra) there was no difficulty in using the word 'satisfied' in Order 21 Rule 2, Civil Procedure Code The Legislature, however, purposely made a departure in this behalf and in place of using the word 'satisfied' used the word 'adjust'. Not only that, it also prefixed the word 'adjusted' with another word of significance, namely 'otherwise'. The purpose of Order 21, Rule 2 of the Civil Procedure Code obviously, therefore, was that an agreement which had the effect of adjusting the decree in any manner had to be got recorded as certified and on failure to do so, the executing Court was prohibited by Order 21, Rule 3 Civil Procedure Code to recognize any agreement which had the effect of adjustment of a decree in the manner stated above. The word 'adjust' or 'adjustment' had not been defined in the Civil Procedure Code. One of the meanings attributed to the word 'adjust' in the Oxford Dictionary is "a refashioning."

8. In regard to the scope of agreements to compromise a claim to execute a decree, a Division Bench of this Court in *Meghraj v. Kesarimal* [3] held as follows :

"Agreements to compromise a claim to execute a decree may be divided into three classes. In the first class of agreement, the decree-holder agrees to give up all his rights under the decree on the judgment-debtor's doing something or other, and there is no adjustment until the judgment-debtor has done whatever he promised. The second class of agreement is where the decree- holder agrees to give up all his rights under the decree in return for a promise by the judgment-debtor to do something or the other; on the recording of such an adjustment the decree becomes fully satisfied and the decree-holder can enforce the fulfillment of the judgment-debtor's promise only by a separate suit. It has in some cases been doubted whether such an agreement termed an executory agreement," could amount to an adjustment of the decree, but it is now well settled that it can; see for example, 56 Mad 198, 22 Lah 383 and AIR 1935 Bombay 308, where the point has been discussed at length, and also 14 Luck 192. The third class of agreement is one in which the parties agreed that the decree shall be modified in some way or other and that the decree-holder shall be entitled to execute the decree as modified but not the original decree. The question of the class in which the compromise falls is a question of fact."

In our opinion, the agreement of a nature such as is said to have been entered into in the instant case will fall in second class of agreements referred to above. Apparently it was an agreement where, according to the judgment-debtor the decree-holder had agreed virtually to give up his right of evicting the judgment-debtor under the decree in return for a promise by the judgment- debtor to enhance the monthly rent. What has been laid down in the case of Meghraj (supra), therefore, apparently is that if an agreement falls within the second category, it will be tantamount to an adjustment of the decree and "on the recording of such an adjustment the decree becomes fully satisfied. "Since Order 21, Rule 2, Civil Procedure Code, uses the words" in whole or in part "after the words" "Otherwise adjusted," even a partial adjustment of the decree is clearly permissible under this rule. Consequently, where a decree has been adjusted in whole or in part, it has to be got recorded as satisfied under Order 21, Rule 2, of the Civil Procedure Code.

9. The distinction pointed out in the case of Bherulal (supra) that such decrees are in two parts, namely, the first part being that the decree has been satisfied as the possession was restored to the decree- holder of the premises, and the second part being that the judgment-debtor has been put into the premises under a fresh agreement

of enhanced rent, is in our opinion more artificial than real. It is not the case of the judgment- debtor that agreement was reached at two stages, the first stage being that the judgment-debtor shall deliver vacant possession to the decree-holder outside Court even without the decree being actually executed through the process of Court with the result that the decree for eviction stood satisfied and that after vacant possession over the accommodation (for in a decree for eviction against a tenant actual physical possession has to be delivered to the decree-holder and not formal or notional delivery of possession) had so been delivered to the decree-holder, the parties entered into a second agreement whereby a fresh lease was created on enhanced rent. The agreement, on the other hand, set up by the judgment debtor is a composite one. What he asserts is that at one and the same point of time even before actual possession over the accommodation had been delivered by him to the decree- holder in pursuance of the decree, the parties entered into an agreement that the judgment-debtor would deliver possession to the decree-holder outside Court and would be allowed to continue as tenant on an enhanced rent thereafter. The offer of the judgment-debtor to deliver possession is never intended to be fulfilled. The judgment-debtor while making such an offer knows that in reality actual possession is not to be delivered even for a second and that he is to continue in possession in the same manner throughout notwithstanding the alleged agreement to deliver possession. In other words, his possession under the agreement is meant for all intents and purposes to be continuing without a break, of course on payment of higher rent. In such a case, it would be obviously preposterous for the judgment-debtor to assert that merely because there was an offer to deliver possession to the decree- holder outside Court, the decree would be deemed to have been satisfied simply because of such an offer even though actually at no stage was vacant possession delivered to the decree-holder. How can a decree for eviction of a tenant be deemed to be satisfied when no actual (and not merely formal) possession has been delivered cannot really be comprehended. In law, the effect of such an agreement as pleaded by the judgment-debtor obviously, therefore, is that there are no two stages where first the decree is satisfied and thereafter a fresh agreement of lease on higher rent is entered into. In the very nature of things the effect of such an agreement is that the parties refashion the decree for eviction in such a manner that it stands modified for all intents and purposes whereby the decree-holder in reality agrees not to evict the judgment-debtor even for a moment but to permit him to continue as a tenant on payment of higher rent. In such matters, it is really the substance which is to be seen and not the form. That being so, the case squarely falls within the second category of agreements as pointed out in the case of

Meghraj (supra) namely, where the decree-holder agrees to give up all his rights under the decree in return for a promise by the judgment-debtor to do something or the other. This clearly amounts to an adjustment of a decree and has to be got recorded as satisfied under Order 21, Rule 2, Civil Procedure Code.

10. It may be pointed out at this stage that it is a salutary rule of interpretation that two statutory provisions should not be so construed as to render one of them otiose. It is again a salutary rule of interpretation that statutory provision should not be so construed as to encourage frivolous litigation. Consequently, Section 47, Civil Procedure Code does not deserve to be so construed as to render Order 21, Rules 2 and 3 otiose. Likewise, Section 47 should also not be so construed as to encourage frivolous litigation by providing a judgment-debtor who having lost in the suit is trying to avoid the execution of the decree as far as possible with a second innings to delay the execution proceedings and to enjoy the boon of delay at the cost of the decree-holder. Such an attempt on the part of the judgment-debtor would, there can be no manner of doubt, amount to an abuse of the process of Court and interpreting Section 47, Civil Procedure Code in a manner which assists the judgment-debtor in his design would be against all canons of rules of interpretation. In our opinion, Rules 2 and 3 of Order 21 of the Civil Procedure Code were really intended to curb this tendency. The purpose of Rules 2 and 3 of Order 21 obviously is that whenever such an agreement as the one pleaded in the instant case is set up by the judgment- debtor which has the effect of adjustment of the decree either in whole or in part the same has to be got recorded as certified. The advantage of the requirement of such an agreement being placed before the executing Court for purposes of recording would be that in the very proceedings for recording the adjustment the question as to whether any such agreement was really arrived at or not would be decided. If it is decided in favor of the judgment-debtor and the adjustment is recorded, he would become entitled to the benefits of the adjustment. On the other hand, if it is found that no such agreement as set up by him was ever entered into, recording or certification of the claimed adjustment of the decree would be refused and the decree-holder would be saved from being compelled to face a second innings on the execution side.

11. At this place we shall like to refer to certain decided cases which support the view which we take. In *B. Banerjee v. Anita Pan,* [4] it was held :

> "We are satisfied that as far as possible Courts must avoid multiplicity of

litigation. Any interpretation of a statute which will obviate purposeless proliferation of litigation, without whittling down the effectiveness of the protection for the parties sought to be helped by the legislation, should be preferred to any literal, pendantic, legalistic or technically correct alternative."

In *M.P. V. Sundararamier and Co. v. The State of Andhra Pradesh,* [5] it was held that it is a rule of construction well established that the several Sections forming part of a statute should be read, unless there are compelling reasons contra, as constituting a single scheme and construed in such manner as would give effect to all of them.

12. We may also point out that it is true, as has been held in the case of Bherulal (supra), that if an objection pertains to the 'execution' of the decree, it has to be investigated under Section 47 Civil Procedure Code. This provision, however, is clearly subject to the specific provision contained in this behalf in Rules 2 and 3 of Order 21 of the Civil Procedure Code. The clear intendment of these two rules is that notwithstanding the general power of making investigation in an objection pertaining to the execution of the decree contained in Section 47 Civil Procedure Code the said power shall not be exercised if it would have the effect of recognizing an adjustment which has not been recorded as contemplaced by Rules 2 and 3 of Order 21 of the Civil Procedure Code. So to speak, the provision contained in this behalf in Section 47 Civil Procedure Code is general whereas the constraint or restriction placed on the power exercisable under Section 47 by Rules 2 and 3 of Order 21 is special. In all cases, therefore, which fall within the purview of Rules 2 and 3 of Order 21 which contain special provision these Rules shall prevail over the general power exercisable by the executing Court in matters pertaining to execution of decree under Section 47 Civil Procedure Code in view of the well known maxim "generalia specialibus non derogant." In J.K. Cotton Spinning and *Weaving Mills Co. Ltd. v. State of Uttar Pradesh,* [6] it was held that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision. If, on the basis of the distinction pointed out in the case of Bherulal (supra) which in our opinion is more artificial than real as already indicated above, investigation of objections which is prohibited by Rule 3 of Order 21 is permitted under Section 47, Civil Procedure Code on the ground that the power of an executing Court under the said Section to investigate objections pertaining to execution is very wide, it would not only result in multiplying and encouraging frivolous litigation and

rendering the provisions of Rules 2 and 3 of Order 21 of the Civil Procedure Code otiose for all intents and purposes in many cases, it will introduce uncertainty, fiction and confusion into the working of the system. In *Collector of Customs v. Digvijaysighji Spinning and Weaving Mills Ltd.,* [7] it was held that it is a well settled principle of construction that where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating, and that alternative is to be rejected which will introduce uncertainty, fiction or confusion into the working of the system.

13. The question in regard to the distinction pointed out in the case of Bherulal (supra) can be looked into from another angle. When it is suggested that there are two parts of such an agreement as in the instant case (i) that the decree has been satisfied as the possession was restored to the decree-holder of the premises, and (ii) that the judgment-debtor has been put into the premises under a fresh agreement on enhanced rent, it in substance envisages two stages one succeeding the other. The first stage is of restoring possession to the decree-holder of the premises and the second of the judgment-debtor being put into the premises under a fresh agreement. When a person is actually never dispossessed as required by law from a premises there can be no question of putting back such person into the premises or it is only one who is not already in possession that can be put into possession of a premises. Where is the question or occasion of putting a person into possession of a premises when he is already in possession thereof. This being so, the stage of putting the judgment- debtor into possession of a premises under a fresh agreement would obviously be subsequent to the stage of possession over the premises having been first restored by him to the decree-holder. As a necessary corollary, therefore, before a judgment-debtor can be allowed to prove under Section 47, Civil Procedure Code that he had been put into possession under a fresh agreement he will have to first establish that he had delivered possession to the decree-holder and thus the decree stood already satisfied prior to his being put into possession of the premises under a fresh agreement. In other words, proving of the first stage, namely, that the decree has been satisfied would be a condition precedent for proving the second stage of being put into possession in pursuance of a fresh agreement because it is only the proof of the satisfaction of the decree which can render it in executable. Now comes the fallacy. Even according to the decision in the case of Bherulal (supra) satisfaction of the decree has got to be recorded under Order 21, Rule 2. This being so it is indisputable that if it is not so recorded, Rule 3 of Order 21 would be barred from recognizing such satisfaction of

the decree. When evidence about satisfaction of the decree which is the first stage of the agreement cannot be led by the judgment- debtor in the Court executing the decree because of the bar created by Order 21, Rule 3 and proof of satisfaction of the decree in the sense of possession over the premises having been restored to the decree-holder is a condition precedent for the proof of the second stage of the agreement, namely, of the judgment-debtor being put into possession under a fresh agreement, can the Court executing the decree permit the judgment-debtor to prove the second stage is a question which has not been considered in the case of Bherulal (supra). In our opinion, the answer of this question can obviously be only in the negative.

14. Now we shall refer to the cases relied on by learned counsel for the respondent. These cases are *Nirmalchand v. Parmeshwari Devi,* [8] *Bhagwati v. Shambhu Nath,* [9] *M.P. Shreevastava v. Veena,* [10] and *Chitra Talkies v. Durga Dass,* [11] Reliance on these very cases was placed before the Division Bench of this Court which decided the case of Bahadur Singh (1977 Jab LJ 609) (supra) and they were distinguished. With greatest respect to the learned Judges who decided Bahadur Singh's case (supra) we agree with the distinction pointed out therein. In addition to that, we may point out that in so far as the decision in the case of Chitra Talkies (supra) is concerned on which considerable emphasis was placed by learned counsel for the respondent, the learned Judge who decided that case seems to be of the view that the adjustment contemplated under Rule 2 of Order 21 Civil Procedure Code is the satisfaction of the decree wholly or in part. As seen above, Rule 2 of Order 21 places emphasis not on the decree being satisfied but on the same being adjusted. In our opinion, the term 'adjusted' is obviously wider than the term 'satisfied'. There may be an agreement which merely satisfies the decree and nothing more, whereas there may be another agreement which apart from satisfying the decree as it stands does something in addition to it, in the sense that it refashions the decree. Such an agreement would amount to an adjustment falling under the second a category of agreements referred to the case of Meghraj (supra). Indeed, certain observations of the SC in *Moti Lal v. Md. Hasan Khan,* [12] even though made in a slightly different context would, in our opinion, be helpful. That was a case where there was a compromise postponing execution on the judgment-debtor agreeing to pay higher rate of interest than the decretal one, such a compromise was found to be enforceable in execution proceedings and it was held :

> "It is open to the parties to enter into a compromise with reference to their rights and obligations under a decree. There is nothing in the Civil Procedure Code

> which prevents the parties from entering into such a compromise. If the compromise amounts to an adjustment of the decree, it must be recorded under Order 21, Rule 2 and if not so recorded, it cannot be recognized by any Court executing the decree."

In that case, as pointed out by the Supreme Court, the compromise which was dated May 29, 1954 had been recorded under Order 21, Rule 2, Civil Procedure Code, within the prescribed period of limitation.

15. We would like to add one word about the decision of the SC in the case of M.P. Shreevastava (supra) also. This case has been relied on even in the case of Bherulal (supra). What is of significance to be noticed in this case is that it was not a case where notwithstanding the fact that there was an adjustment as contemplated by Order 21, Rule 2, Civil Procedure Code, it was held that the agreement amounting to such adjustment could be made the basis of an objection under Section 47, Civil Procedure Code even without getting the adjustment recorded as certified under Order 21, Rule 2. On the other hand, it was a case where there was no such adjustment at all. It was pointed out in that case :

> "O.21, Rule 2 prescribes the procedure for recording payment of money under any decree or for adjustment of any decree to the satisfaction of the decree-holder. If any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder is enjoined by Rule 2(1) of Order 21 to certify such payment or adjustment to the Court; the judgment-debtor may also inform the Court of such payment or adjustment, and it may be recorded after enquiry; Rule 2(2) of Order 21. In the present case, however, there is no adjustment. Adjustment contemplates mutual agreement, and in the present case, there is no evidence of any consent on the part of the appellant who was never willing to take back the wife and resume conjugal relations. Order 21, Rule 2 contemplates adjustment of the decree by consent-express or implied-of the parties; where there is no such consent, Order 21, Rule 2 does not apply."

16. In view of the foregoing discussion, we are of the opinion that the agreement set up by the respondent in the instant case came within the purview of the term 'adjustment' and since the said agreement had not been got recorded as certified by the respondent under Order 21, Rule 2, Civil Procedure Code, his objection could not be

recognized by the Court executing the decree in view of Rule 3 of Order 21 of the Civil Procedure Code. The view taken by the Court executing the decree and dismissing the objection filed by the respondent was correct and the District Judge committed a manifest error of law in the revision filed against the order of the executing Court in taking a contrary view.

17. In the result, this writ petition succeeds and is allowed with costs and the impugned order of the District Judge, dated 16th July 1985, a copy whereof has been filed as Annexure-B to the writ petition, is quashed. The outstanding amount of security be refunded to the petitioner.

Petition allowed.

Cases Referred.

1. 1977 Jab LT 609
2. 1981 MPLJ 333
3. AIR 1948 Nag 35
4. AIR 1975 SC 1146
5. AIR 1958 SC 468
6. AIR 1961 SC 1170
7. AIR 1961 SC 1549
8. 1958 Jab LJ 427
9. AIR 1960 All 562
10. AIR 1967 SC 1193
11. AIR 1973 All 40
12. AIR 1968 SC 1087